

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

WAYNE DOUGLAS BUTTS, #331017,

Petitioner,

v.

CIVIL ACTION NO. 2:04cv551

GENE M. JOHNSON, Director of the
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254.

The petition alleges violation of federal rights pertaining to petitioner's conviction on June 17, 2002, in the Circuit Court of the City of Hampton, Virginia for feloniously driving as an habitual offender, as a result of which he was sentenced to serve one year and six months in the Virginia penal system.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), Rule 72(b) of the Federal Rules of Civil Procedure, and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The report of the Magistrate Judge recommending dismissal of the petition was filed on May 25, 2005. By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. The Court has

received no objections to the Magistrate Judge's Report and Recommendation and the time for filing same has expired.

The Court hereby ADOPTS the findings and recommendations set forth in the report of the United States Magistrate Judge filed on May 25, 2005, and it is, therefore, ORDERED that the petition be DENIED and DISMISSED and that judgment be entered in favor of the respondent.

Accordingly, the Court FINDS that the claim set forth in Ground (a) is moot because it attacks petitioner's sentence only and petitioner has been released from prison; the claims set forth in Ground (b) (1)-(5) are procedurally defaulted and petitioner has not shown the requisite cause and prejudice or miscarriage of justice to permit this Court to consider the merits of the claims; and the claims set forth in Ground (c) (1)-(5) have previously been adjudicated on the merits by the Supreme Court of Virginia and there is no indication from the record that this adjudication on the merits was contrary to, or involved an unreasonable application of, clearly established federal law, nor that it has resulted in a decision that was based on an unreasonable determination of the facts.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of

entry of such judgment. The petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a certificate of appealability. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

The Clerk shall mail a copy of this Order to the petitioner and to counsel of record for respondent.

ENTERED this 21st day of June, 2005.

_____/s/
Jerome B. Friedman
United States District Judge